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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[8 March 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

A call upon member States of the United Nations to comply with international human rights standards prohibiting the return of persons to a State where they are likely to be subject to torture, pursuant to the Convention Against Torture, and Other Cruel, Inhumane and Degrading Punishment, article 3

1. Torture, and the fear of torture, displaces thousands of annually. These persons, forced to flee for sake of survival, often have no choice but to seek safe havens in other lands. There are, however, States where these individuals are not receiving the protections required by international human rights standards relating to torture. As a result, victims of torture are often unable to get the protections international human rights standards require.

2. Human Rights Advocates (HRA) submits this report to the Commission on Human Rights, in order to highlight this non-compliance pertaining to international standards governing an individual's right to be free form torture, and to encourage the Commission to call upon the States of the international community to bring their domestic practices into compliance with these international standards, as codified in the Convention Against Torture article 3, which has been ratified by 118 States./United Nations Treaty Database, www.untreaty.un.org./

3. In bringing this matter to the attention of the Commission, HRA recalls the Commission's 1999 resolution, which states that *"freedom from torture and cruel, inhuman or degrading treatment or punishment is a non-derogable right and that the prohibition of tortured is explicitly affirmed in article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. . . ."* In complying with this non-derogable right, it is as important for a State not to return an individual to a country where she is likely be tortured, as it is for a State to ensure that an individual is not tortured within its own boundaries.

4. Article 3 of the Convention Against Torture, and other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) codifies the international standard on the non-refoulement of torture victims. Under article 3, a State party is prohibited from returning a person to another State where there is reason to believe she would be subjected to torture. Human rights advocates, concerned with the current state of refugees around the world and the increasing difficulties these individuals face when seeking asylum or other forms of protection in another State, hailed the inclusion of article 3 in the CAT as a new recognition of human rights standards. These same advocates believed, based upon the language of article 3, that article 3 could provide protection for those who are unable to meet the stringent standards of asylum law.

5. HRA asserts, however, that this result has not been achieved. The prohibition against returning an individual to a country where she is likely to be subject to torture has not been implemented as foreseen. And, without cognizant recognition of, and protection of, this fundamental human right, States are not in compliance with their international human rights obligations.

6. A clear example of this failure to recognize the importance of protecting the prohibition in article 3, and the detriment to human rights which results, can be seen in the case of the United States. Human rights groups did indeed welcome the U.S.' recognition of the international human rights standards on torture, evidenced by the country's ratification of the CAT in 1990./136 Cong. Rec. S. 17486-92 (daily ed., October 27, 1990)./ However, the reality of the situation is that, despite the country's proclaimed intent to protect human rights in relation to torture, the U.S has failed to appropriately implement the provisions of article 3 in order to protect international human rights standards.

7. For example, the U.S., via an "understanding", raised the standard of proof required for an individual to prove she fears torture in her own country from that of " substantial grounds for believing" she would be tortured if returned to her home country, to the standard of *"more likely than not."* This heightened standard requires an individual to prove, based only on objective evidence, that there is a clear probability (i.e. more than a 50% chance) that the individual would be subject to torture in the future, without taking into account any past harm the individual may have suffered./Anker, Deborah, E. Law of Asylum in the U.S. (Refugee Law Center 1999), pgs. 513-518./

8. Another example can be seen in the U.S.' delayed implementation of domestic mechanisms to codify the international CAT standards and protect individuals from being returned to their torturers. In fact, almost a decade elapsed between the time the U.S. agreed to abide by these international standards in 1990, and the time the first domestic regulations executing these standards were promulgated. Regulations governing the Immigration and Naturalization Service's (INS) procedures for hearing cases of individuals who feared torture if forced to return to their home countries were not released until March 1999./64 Fed. Reg. 8478-96 (Feb. 19, 1996)./ Moreover, once the final procedures were actually released, they turned out to be confusing and inadequate in the protections they offer to individuals, in comparison to the recognized international standard codified by the CAT.

9. To remedy this, and to encourage States to quickly and correctly implement the human rights protections promulgated in article 3 (i.e. the right to not be returned to a country where a person is likely to be subject to torture), HRA urges the Commission to take action to encourage States to implement the provision of article 3 into their domestic legislation, and to also submit timely reports on their progress towards the full protection of this human rights as outlined by article 19 of the CAT.

10. Another concern HRA has regarding States who ignore the human rights standards in article 3 is an issue that has been raised to the Commission before – that of unwarranted detention of individuals which amounts to torture, cruel, inhuman, or degrading treatment. Using the U.S. as an example, it has been widely reported that many refugees and asylum-seekers arriving in the U.S., fleeing torture, are held for long periods in detention, in conditions which surely amount to torture and a violation of their individuals human rights. Amnesty International has documented that refugees detained while awaiting a hearing or other form of relief, are held under abhorrent conditions which violate numerous internationally recognized human rights./Amnesty International, Lost in the Labyrinth: Detention of Asylum Seekers in the USA, Report from the 1999 Campaign on the USA, http://www.amnesty-usa.org/rightsforall/asylum/ins./ This treatment contrasts with the resolution of the Commission, as described above, which reminds all States that the prolonged detention of an individual can facilitate torture and could itself constitute a form of cruel, inhuman, or degrading treatment or punishment.

11. Therefore, HRA also urges the Commission to once again remind States that detention can easily amount to torture, and that all efforts should be made to protect refugees, and others fleeing torture in their home country, from being subject to further torture, or cruel, inhuman and degrading treatment in the country in which they seek protection.

12. Only the international standards of human rights protections adopted by the international community and codified in the Convention Against Torture can adequately protect those fleeing torture in their homeland. To facilitate these protections and bring the present procedures of the States into compliance with international law, HRA respectfully suggests that the Commission adopt the following recommendations.

Recommendations

13. Encourage States to modify their laws to provide appropriate mechanisms for those fleeing human rights violations arising to the level of torture, and inhuman or degrading treatment, allowing them to seek the full protections afforded to them under international human rights law.

14. Condemn those States whose practices violate international human rights standards relating to the practice of torture, and inhuman or degrading treatment.

15. Recommend the withdrawal of all State understandings from their instruments of ratification of the Convention Against Torture, thereby fully complying with the international standards.

16. Encourage all State parties to the CAT to make yearly reports to the Committee Against Torture, as required by the Convention Against Torture article 19, so that their compliance with the human rights provision of the Convention Against Torture can be reviewed by the international body charged with ensuring compliance with the Convention.